

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Except as provided in subsection (4), s. 373.1395, F.S., provides that a water management district (district) that affords the public with a park area or other land for outdoor recreational purposes, or allows access over district lands for recreational purposes, owes no duty of care to keep that park area or land safe for entry or use by others or to give warning to persons entering or going on that park area or land of any hazardous conditions, structures, or activities thereon. A district that provides the public with a park area or other land for outdoor recreational purposes:

- Does not extend any assurance that such park area or land is safe for any purpose;
- Does not incur any duty of care toward a person who goes on that park area or land; and
- Is not responsible for any injury to persons or property caused by an act or omission of a person who goes on that park area or land.

However, this protection from liability does not apply if there is any charge made or usually made for entering or using the park area or land, or if any commercial or other activity from which profit is derived from the patronage of the public is conducted on such park area or land or any part thereon.¹ The term "outdoor recreational purposes," as used in the statute, includes activities such as, but not limited to, horseback riding, hunting, fishing, bicycling, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, motorcycling, and visiting historical, archaeological, scenic, or scientific sites.²

Furthermore, a district that leases any land or water area to the state for outdoor recreational purposes, or for access to outdoor recreational purposes, owes no duty of care to keep that land or water area safe for entry or use by others or to give warning to persons entering or going on that land or water of any hazardous conditions, structures, or activities thereon, except as provided in subsection (4). A district does not, by giving such lease, extend any assurance that the land or water area is safe for any purpose, incur any duty of care toward a person who goes on the leased land or water area, and is not

¹ Section 373.1395(2)(a), F.S.

² Section 373.1395(5), F.S.

responsible for any injury to persons or property caused by an act or omission of a person who goes on the leased land or water area.³

Subsection (4) of s. 373.1395, F.S., does not relieve any district of any liability that would otherwise exist for gross negligence or a deliberate, willful, or malicious injury to a person or property, nor does it create or increase the liability of any water management district or person beyond that which is authorized by the Tort Claims Act (s. 768.28, F.S.).

The proposed changes to s. 373.1395, F.S., contained in this bill, are in response to a court case in which a young man was riding his dirt bike down a piece of property owned by the South Florida Water Management District. The person drove his bike into a drainage ditch and was severely injured. The district claimed it was covered by the limitation of liability protection. However, the trial court ruled that the land in question was not open to the public, and therefore, the limitation of liability protection afforded to water management districts in s. 373.1395, F.S., did not apply to the South Florida Water Management District in this case.⁴

Effect of Bill

This bill amends s. 373.1395(2), F.S., to expand the current limitation of liability protection given to the districts' to include water areas, in addition to the protection already granted to park areas and other district lands that are available to the general public. This bill also clarifies that the districts have no duty of care and do not have to make any assurances that the districts' land or water areas that are being used by the public for outdoor recreational purposes or access over or use of district or other lands are safe for any purposes.

In addition, this bill provides that the sale of food, beverages, plants, and tee shirts, or the activities of nonprofit organizations on park area or land or any part thereof does not cause a district to lose the protections from liability provided in s. 373.1395, F.S.

This bill also provides that the limitations on liability in s. 375.251, F.S., apply to private property owners who grant easements to the public in order to access water management district lands that the district makes available for outdoor recreational activity. This would allow private land owners who grant easements to the public in order to access water management district lands to owe the public no duty of care to keep that easement safe for entry or use by others, or to give warning to persons entering or going on that easement area of any hazardous conditions, structures, or activities on the easement. However, the private property owner is protected from liability which would otherwise exist for deliberate, willful or malicious injury to persons or property.

The bill defines the term "park area or land or water area" to include all park areas, district or other lands, rights-of-way, or water areas that the district has a property or other interest in or that the district controls, possesses, or maintains.

This bill further specifies that the limitation of liability protections provided in s. 373.1395, F.S., applies to:

- Any person going on park area or land or water area, regardless of whether the person goes as an invitee, licensee, trespasser, or otherwise.
- Parks, district or other lands, and water areas used by the park, land, or water areas that were made available to the public or whether a person was engaged in a recreational activity at the time of an accident or occurrence.

³ Section 373.1395(3)(a), F.S.; Section 373.1395(3), F.S., applies to any person going on the leased land or water area whether the person goes as an invitee, licensee, trespasser, or otherwise. § 373.1395(3)(b), Fla. Stat

⁴ *South Florida Water Management District v. Daiagi*

B. SECTION DIRECTORY:

Section 1: Amends s. 373.1395, F.S., relating to limitations of liability of water management districts with respect to areas made available to the public for recreational purposes without charge.

Section 2: Provides an effective date of July 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See fiscal comments section below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See fiscal comments section below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See fiscal comments section below..

D. FISCAL COMMENTS:

Private landowners that grant easements to the public in order to access water management district lands and water management districts may see a decrease in court costs and liability losses for injuries sustained by persons on private easements and district land or water areas.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 19, 2009, the Agriculture and Natural Resources Policy Committee adopted 2 amendments to this bill. Amendment 1 moved the language in paragraph (2)(b) of s. 373.1395, F.S., into a new subsection (6) in order for the language to apply to the entire section of the statute and not just to subsection (2) of the statute. This change allows the language to apply to lands leased by the district along with lands owned by the district. Amendment 2 added a new subsection to s. 373.1395, F.S., to provide that the limitations on liability in s. 375.251, F.S., apply to private property owners who grant easements to the public in order to access water management district lands that the district makes available for outdoor recreational activity.